



CITY OF PHILADELPHIA

LAW DEPARTMENT
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August 29, 2019

VIA ELECTRONIC MAIL

Derek Mead
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77730-38798550@requests.muckrock.com
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Re: Mead #5198, 5201, 5202

Dear Mr. Mead:

Thank you for writing to the City of Philadelphia (the “City”) Department of Parks and Recreation (“Parks”), Law Department (“Law”), and Mayor’s Office with your requests pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101 *et seq.* (the “Act” or “RTKL”). On July 22, 2019, Parks, Law, and the Mayor’s received your requests for the following records:

- * All instructional materials, presentations and presentation materials (including recorded video and audio, PowerPoint files, prepared remarks, and slides formats), and other guidance on the use of Mosquito devices. This includes any notes taken during meetings that discussed the use of Mosquito (or from "Moving Sound Technologies"), any explanations (whether internally or externally generated) of how the software works, and any other document that has been used to help explain the use of the devices to any party, including internal documentation, public relations materials, and executive summaries. This also includes any description of input and output data fields that will aid in understanding the type of information that is submitted to the software, and that is produced by the software. **[Item 1]**
- * A copy of any privacy impact assessments, use policies, standard operating procedures, data retention policies, legal opinions, warranties, non-disclosure agreements, contracts, liability waivers, insurance agreements, Requests for Proposals, Responses to Requests for Proposal, Memorandums of Understanding, Letters of Interest, usage policies, or informal agreements that reference "mosquito" or "Moving Sound Technologies" otherwise guide it use or the relationship between this agency and the provider or developer of the software. **[Item 2]**
- * A copy of any funding opportunity announcements, grant applications and grantor status/progress reports, reports to legislative bodies, annual reports that mention the use of these devices, as well as audit records, including but not limited to security audits of the software, misuse reports, and reports to oversight bodies. **[Item 3]**

* Any electronic mail communications and electronic mail attachments that mentions "mosquito" or "Moving Sound Technologies." Please limit the search results from January 1, 2015 to present. **[Item 4]**

On July 29, 2019, the City informed you that it would require up to an additional thirty (30) days to respond to your requests. Your requests were inadvertently deemed denied on August 27, 2019. This constitutes the City's final response to your requests.

Your requests are granted in part and denied in part. Please be advised that the City identified one record responsive to Items 1 through 3 of your requests, and they are granted to the extent they seek that record. Item 4 of your request is denied as it is not sufficiently specific to enable the City to determine specifically what records are being requested. The Act requires, among other things, that a written request "identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested" 65 P.S. § 67.703.¹ The Commonwealth Court has endorsed a three-part test for specificity of requests, focusing on the requests (1) subject matter, (2) scope, and (3) time frame. *See Pennsylvania Dept. of Educ. v. Pittsburgh Post-Gazette*, 119 A.3d 1121, 1124 (Pa. Commw. 2015); *see also Commonwealth v. Engelkemier*, 148 A.3d 522, 530 (Pa. Commw. 2016). This item of your request is insufficiently specific in its entirety due to its lack of any subject matter, as the keywords provided do not constitute one. It is further insufficiently specific due to its excessive time frame in light of its lack of subject matter.

The requirement of specificity is necessary to (1) ensure that a requestor provides enough information so that "an agency can determine whether to grant or deny the request[;]" *Nanayakkara v. Casella*, 681 A.2d 857, 859-60 (Pa. Commw. 1996), and (2) "to prevent agencies from suffering undue interference and obstruction of their daily functions; . . . [which] would be unavoidable if agency officials always could be subjected to broad and unlimited requests for documents and records." *Mooney v. Temple Univ. of the Commonwealth Sys. Of Higher Educ. Bd. Of Trustees*, 292 A.2d 395, 397 n.8 (Pa. 1972) ("requests for inspection [must] be specific and particular seeking disclosure of named documents or records rather than broad and unlimited requests for undefined bodies of documents or records"); *see also, e.g., Arduino v. Borough of Dunmore*, 720 A.2d 827, 831 (Pa. Commw. 1998) (holding that a request for "'all records' related to the disbursement of the funds for [certain] public projects" lacked sufficient specificity), *appeal denied*, 741 A.2d 195 (Pa. 1992); *Hunt v. Pa. Dep't of Corr.*, 698 A.2d 147, 149 (Pa. Commw. 1997) (holding that requests, including a request for all documents given by Department of Corrections to inmate and by inmate to Department, lacked sufficient specificity).

Pennsylvania courts have held that such broad, sweeping requests are improper under the Act. *Berman v. Pa. Convention Ctr. Auth.*, 901 A.2d 1085, 1089 (Pa. Commw. 2006) (holding that request for "'[t]he most recent plans, construction, and design documents' relating to" the convention center expansion was "more in the nature of a discovery request than a proper request for public records"); *Associated Builders and Contractors, Inc. v. Pa. Dep't of Gen Servs.*, 747 A.2d 962, 965-66 (Pa. Commw. 2000) (holding that requests "akin to document requests under the civil discovery rules, *i.e.*,

¹ This language is identical to sufficient specificity requirement in § 2(c) of the prior Right-to-Know Law, 65 P.S. 66.1, *et seq.* Accordingly, the case law interpreting this language in the context of the old Right-to-Know Law remains binding. *Dep't of Conservation & Natural Res. v. Office of Open Records*, 1 A.3d 929, 940-41 (Pa. Commw. 2010) (interpreting language in the new Act by relying on prior precedent holding that "[t]he language in the two definitions is virtually identical. Faced with a prior judicial interpretation . . . by . . . the Pennsylvania Supreme Court of the account/voucher/contract language in the RTKL, even though issued in the context of the Old Law, we are not at liberty here to ascribe a different meaning to the same language.").

‘any and all documents relating to [subject matter]’” lack sufficient specificity); *accord PSP v. OOR*, 995 A.2d. 515, 517 (Pa. Commw. 2010) (“The portion of the request seeking any and all records, files or communications [concerning subject matter] is insufficiently specific for the PSP to respond to the request.”). Such broad requests have been, and will be, denied.

It would place an unreasonable burden on the City to go through all of its records for an extended period of time without knowing, with sufficient specificity, what type of records are being sought. *Cf. Mollick v. Twp. of Worcester*, 32 A.3d 859, 871 (Pa. Commw. Ct. 2011) (holding that requests seeking emails between certain agency officials and employees for the past one and five years without sufficiently identifying the subject matter were insufficiently specific, and concluding that “it would place an unreasonable burden on an agency to examine all its emails for an extended time period without knowing, with sufficient specificity, what Township business or activity the request is related [to].”).

As your request is insufficiently specific, the City is unable to properly assert all applicable grounds of denial and reserves the right to do so if your request is construed as seeking specific records after a review of such records. Subject to, and without waiving the foregoing objections, your request on its face seeks records exempt from disclosure on the following grounds:

- Draft records exempt from disclosure pursuant to 65 P.S. § 67.708(b)(9).
- Records reflecting “[1] internal predecisional deliberations of an agency, its members, employees or officials or [2] predecisional deliberations between agency members, employees or officials and members, employees, or officials of another agency . . . or [3] any research, memos, or other documents used in predecisional deliberations.” 65 P.S. § 67.708(b)(10)(i)(A).
- Records containing “personal identification information” exempt from disclosure pursuant to 65 P.S. § 67.708(b)(6) including (but not limited to) personal financial information, social security and/or federal tax identification numbers, employee numbers, bank account information, insurance policy numbers, home addresses, cell phone numbers, home telephone numbers, and personal email addresses.
- Notes or working papers exempt from disclosure pursuant to 65 P.S. § 67.708(b)(12).
- Records protected by the attorney/client privilege, the work product doctrine, or the deliberative process privilege, as such documents are not public records as that term is defined under the Act, 65 P.S. § 67.102. *See, e.g., Redland Soccer Club v. Dep’t of the Army*, 55 F.3d 827, 854 (3d Cir. 1995); *see also Heavens v. Pa. Dep’t of Env’tl. Prot.*, 65 A.3d 1069, 1077 (Pa. Commw. Ct. 2013) (“[T]he RTKL’s presumption of public access does not apply to privileged records and the RTKL does not give agencies the discretion to disclose privileged records.”).

Should you wish to contest any part of this decision, you may file an appeal with the Office of Open Records as provided for in 65 P.S. § 67.1101. You have 15 business days from the mailing date of this response to challenge the City’s response. Please direct any appeal to the Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234.

Please be advised that this correspondence will close your request with our office as permitted by law.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert L. Kieffer". The signature is fluid and cursive, with the first name "Robert" and last name "Kieffer" clearly distinguishable.

Robert L. Kieffer Esq.
Assistant City Solicitor